

आयकर अपीलीय अधिकरण
कोलकाता 'डी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'D' BENCH, KOLKATA**

श्री दुव्वुरु आरएल रेड्डी, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

श्री रकेश मिश्रा, लेखा सदस्य

के समक्ष

Before

SHRI DUVVURU RL REDDY, VICE PRESIDENT (KZ)

&

SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

I.T.A. No.: 1419/KOL/2023

Assessment Year: 2017-18

Shri Palash Kumar Kapas	Vs.	ACIT, Circle-47, Kolkata
(Appellant)		(Respondent)
PAN: AKWPK5060C		

Appearances:

Assessee represented by : Abhishek Bansal, FCA.

Department represented by : Sailen Samadder, Add. CIT, Sr. DR.

Date of concluding the hearing : January 9th, 2025

Date of pronouncing the order : April 4th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)- NFAC, Delhi [hereinafter referred to as ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2017-18 dated 24.11.2023, which has been passed against the assessment order u/s 144 of the Act, dated 18.12.2019.



2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

- “1. For that the order of the Ld. CIT (A) is arbitrary, illegal and bad in law.*
- 2. For that the Ld. C.I.T (A) erred in deciding the appeal without allowing the appellant any proper and reasonable opportunity of being heard.*
- 3. For that the Ld. CIT(A) having accepted that the SBN deposits Rs. 34,86,700/- was out of the other income Rs. 38,92,292/- offered in the return of income erred in holding that income to the extent of Rs. 34,86,700/- out of other income of Rs. 38,92,292/- shown in return of income was to be assessed as unexplained cash credit.*
- 4. For that the order of the AO be modified and the assessee be given relief prayed for.*
- 5. For that the appellant craves leave to add, alter or withdraw any ground/s of appeal on or before hearing of the appeal.”*

3. Brief facts of the case are that the assessee had filed his return of income for the AY 2017-18 on 27.11.2017 declaring total income of Rs. 45,42,190/-. The case was selected for limited scrutiny for the reason of cash deposit during the demonetization period. The Assessing Officer (hereinafter referred to as ld. 'AO') issued statutory notices u/s 143(2) and 142(1) of the Act which were duly served upon the assessee; in response to which the assessee submitted some details from which it was observed that the assessee had received service charges through his proprietorship business in the name of M/s. M.P. Enterprises. It was noticed from the bank records that the assessee had deposited cash of Rs. 32,89,700/- during the FY 2016-17 in his current account, out of which a sum of Rs. 30,04,500/- was deposited during the demonetization period. The assessee also deposited cash of Rs. 1,97,000/- during the FY 2016-17 in his savings account, out of which Rs. 1,37,000/- was deposited during the demonetization period. Since the assessee did not comply to the notice issued u/s 142(1) of the Act,

the Ld. AO referred to the provisions of section 144(1) of the Act and also section 68 of the Act and observed that the assessee was unable to prove that in his normal business or otherwise, he possessed so much cash. He further held that the assessee had started under a cloud and had failed to dispel that cloud to reasonable satisfaction of the assessing authority to claim that the amount did not represent income from some undisclosed source and therefore, the provisions of section 68 of the Act were clearly attracted. The assessee could not provide proper ledger account of the service charges received by him and had also failed to prove the fact that the cash deposited during the demonetization period as well as that deposited throughout the whole financial year was out of the normal business receipts. Therefore, the Ld. AO held that the cash deposit of Rs. 34,86,700/- during the whole FY 2016-17 represented income from undisclosed sources and the assessee had concealed his true income which otherwise was taxable at a higher rate i.e. 60%. A sum of Rs. 34,86,700/- was thus added to the total income shown as per the return at Rs. 45,42,190/- and the total income was thus assessed u/s 144 of the Act at Rs. 80,28,890/-.

3.1 Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who partly allowed the appeal of the assessee by observing as under:

“[1.6] Discussion of facts and decision on merits: -

Three notices, one on 01-03-2021 and the other on 15/09/2023 and 26/09/2023 were issued. In response to the first notice, the appellant filed an explanation along with financial statements and bank account statements for F.Y. 2016-17. No further responses have been received. Having gone through the submission, I will proceed to dispose off this appeal based on materials available on record and on merits.

During the assessment proceeding, while adequate opportunities have been provided during the assessment proceeding to explain, with supporting

documents, the nature and source of cash deposited in the appellant's bank accounts amounting to Rs.34,86,700/-, the appellant apparently gave a summary generic response and had not availed those opportunities to explain satisfactorily the genuineness of cash credits, and the nature and source of cash deposits in bank accounts during the demonetization period. In the absence of the same, the AO had no option but to pass the assessment order u/s 144 of the Act with the afore-mentioned additions to the total income of the appellant. On ground no. 2, it is seen that the appellant was issued a show cause notice on 04/12/2019 after several notices in the past and in response to this show cause notice, the appellant filed a reply and the same was considered by the AO in the assessment order, which was passed on 18/12/2019. The appellant had furnished response on 05/21/2016 and on 09/12/2016. Therefore, claiming that adequate time was not given to respond to the show cause notice is without any basis and substance. The Appellant could have furnished those missing details at this appeal stage too but here too only general details have been filed even after the lapse of 3 years.

In view of the above, gr. No 2 is dismissed.

In Form-35 under Pt. 11, Statement of facts is reproduced here as under:

"1. During the year under assessment the Ld. AO added back Rs. 34,86,700/-under section 68 of the income tax Act 1961 as Unexplained money".

The appellant stated that he is engaged in the business of service charges received for material handling and transporting under the proprietary business under the name and style of M/s. M.P. Enterprises.

The Appellant further submitted as follows: -

"In response to the show cause notice, dated 04/12/2019, your appellant has submitted the computation sheet along with bank account details and other corresponding documents, where your appellant has clearly mentioned before the A.O. that the alleged amounts which was deposited to the bank accounts are already shown in the income tax return and your appellant has also offered Rs. 38,92,292/- for taxation under the head "head from other sources alongwith other income. In support of the claim your appellant is submitting herewith the copy of the computation of income tax" where it is clearly mentioned that the entire amount which was deposited to the bank has taken in the income of your appellant"

The ITR, bank statements and other documents have been perused. As stated by the appellant, he had offered Rs. 621,378 as income from business and offered Rs. 40,85,340/- as income from other sources. The



individual statement of the appellant shows that the capital of Rs. 31,50,000 was introduced in the year against which income from other sources of Rs. 38,92,292/- was offered. Apparently, the response of the appellant was summary in nature and had not explained the nature and source of cash deposits in bank accounts during the demonetization period or otherwise. It is pertinent to note that in the case of unexplained cash credits or where the assessee is found to be the owner of unexplained money, the onus is on the assessee to prove satisfactorily that the nature and source of such deposits/money are explained.

It is a fact that the appellant had already offered Rs. 38,92,292/- under the head income from other sources but claimed to be mostly on account of cash deposits in the bank accounts. The AO went on to make addition of Rs. 34,86,700/- on the same bank account deposits u/s 68 of the Act. This addition is less than what was offered by the appellant as Income from other sources. Since the claim of the appellant was not disputed or countered by the AO and there is no other material evidence on record to prove that the appellant's claim of income from other sources is not out of his bank account deposits, but at the same time, the appellant had also not explained the nature and source of cash deposits, which was mostly during the demonetization period, it is held that the income offered to tax under the head Income from other sources to the extent of bank deposits (i.e., 34,86,700/-) is to be taxed under section 68 of the Act and the tax rates under section 115BBE is to be applied accordingly.

In view of the above details, the grounds of appeal are treated as partly allowed.”

4. Rival submissions were heard and the documents and written submissions filed have been examined. It was argued by the Ld. AR that the case involved legal issue as the assessee deposited the money during the demonetisation period in the bank account which was offered for tax. Since the income was disclosed in the return of income, the same was not liable to be added u/s 68 of the Act, but the Ld. AO had levied tax @ 60% while the assessee had offered the income @ 30% under the head income from other sources and the same was on account of service charges received. It was submitted that the assessee is a custom agent and had received the money on account of service charges. The Sisir did not appear before the Ld. AO and the order was passed under section

144 of the Act. Our attention was drawn to pages 5 and 6 of the order of the Ld. CIT(A). When enquired about the breakup of the income returned, it was stated that a sum of Rs. 6,21,378/- was the income from business while a sum of Rs.40,85,340/- was shown as income from other sources. The details of cash deposited in the earlier year were not available with the Ld. AR. The Ld. AR relied upon the decisions in ITA Nos. 77/Pun/2021 & 78/Pun/2021 in support of the claim that the income offered in the return of income cannot be taxed at a higher rate. The Ld. AR also relied upon the decision of Hon'ble Madras High Court in the case of **S.M.I.L.E. Microfinance Limited vs ACIT** and other judicial pronouncements and argued that the rate of 60% was applicable for the transactions from 01.04.2017 onwards and not prior to the said date. Further reliance in this regard was also placed on the following case laws:

- i) *Naranbhai Samatbhai Bharwad, through legal heir Devrajbhai Naranbhai Bharwad vs ITO [I.T.A. No.272/Ahd/2024] dated 03.01.2025*
- ii) *Commissioner of Income-tax v. Isthmian Steamship Lines [1951] 20 LT.R. 572.577 (SC)*
- iii) *Commissioner of Income-tax v. Scindia Steam Navigation Co. Ltd. [1961] 42 I.T.R. 589: [1962] 1 S.C.R. 788*
- iv) *Karimtharuvi Tea Estate Ltd. vs. State of Kerala [1966] 60 ITR 262 (SC)*
- v) *Commissioner of Income-tax (Central)-1, New Delhi v. Vatika Township (P.) Ltd. [2014] 49 taxmann.com 249 (SC)*
- vi) *Ayyappan Textiles Ltd. v. CIT [2001] 117 TAXMAN 320 (Mad)*

vii) *CIT vs S.R.A Systems Limited T.C.A. Nos. 1470 to 1472 of 2010 decided on Jan 19, 2021*

5. It was also submitted that in the instant case, the assessee has deposited cash throughout the year in his bank account and the details were submitted as under:

Name of Bank	A/c No.	Nature	Cash deposited			Total
			01.04.2016 To 08.11.2016	09.11.2016 To 31.12.2016	01.01.2017 To 31.03.2017	
Indian Bank	459881098	Saving Bank	60,000.00	92,000.00	40,000.00	192,000.00
Santragachi Co. Operative Bank	22552040001911	Saving Bank	-	45,000.00	30,000.00	75,000.00
State Bank of India	31325723840	Saving Bank	-	-	-	-
UCO Bank	6530210000281	Current	285,200.00	2,902,000.00	-	3,187,200.00
United Bank of India	589050002592	Current	-	102,500.00	-	102,500.00
			345,200.00	3,141,500.00	70,000.00	3,556,700.00

6. It was further submitted that the assessee is an individual and earned income by way of service charges for material handling and transporting under the name and style of M/s. M.P. Enterprises. It was argued that the Ld. CIT(A) held that the income offered to tax under the head 'income from other sources' to the extent of bank deposits i.e. a sum of Rs. 34,86,700/- was to be taxed u/s 68 of the Act and the tax rate u/s 115BBE of the Act was to be applied accordingly and, in this regard, it was submitted that the income already declared in the return of income cannot be assessed as unexplained cash credit u/s 68 of the Act. The action of the Ld. CIT(A) in accepting cash deposits of Rs. 70,000/- during the period from 01.01.2017 to 31.03.2017 and also accepting service charges to the extent of Rs. 3,35,292/- not deposited in the bank as normal income while assessing the cash deposited of Rs. 34,86,700/- during the period from 01.04.2016 to 31.03.2017 u/s 68 of the Act was merely based upon surmises and conjectures and without any basis. There is no dispute that the addition of Rs. 34,86,700/- made by the Ld. AO was deleted by the Ld. CIT(A) and as such there was no



justification for the Ld. CIT(A) for invoking provisions of section 68 read with Section 115BBE of the Act. It was also argued that no addition can be made if the assessee had already shown the cash deposits as income and any other addition is tantamount to double taxation. The assessee had also relied upon the decision of the Coordinate Bench in the case of **Usha Patodia vs ITO** in **ITA No. 1969/KOL/2024** order dated 08.01.2025. As regards the non-applicability of the provisions of section 115BBE of the Act, the assessee relied upon the cases mentioned in para 4 above in support of the claim that the same was applicable for the transactions from 01.04.2017 onwards and requested that the observation of the Ld. CIT(A) that the cash deposit amounting to Rs. 34,86,700/- is liable for the higher tax rate as provided u/s 115BBE of the Act is bad in law and therefore is liable to be deleted.

7. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be confirmed.

8. We have gone through the submissions made. The assessee had filed the return of income and income was shown in the return as income from service charges for material handling and transporting under the name and style of M/s. M.P. Enterprises. The assessee has filed a copy of bank account in support of the claim that cash was deposited regularly during the entire financial year in all the bank accounts. We also note that the Ld. AO has not made any addition for the income shown for the period from 01.01.2017 to 31.03.2017 amounting to Rs. 70,000/- deposited in the two bank accounts and no adverse view has been expressed by the Ld. CIT(A) as well, therefore, prima facie there was no dispute regarding the business income of the assessee and the contention of the assessee to have carried on transportation and material handling business appears to be accepted



by the Ld. AO. The assessee has enclosed a few invoices for service charges with details of the consignee and buyer. However, the details of introduction of capital in the business are not available. Apparently, these details were not filed before the Ld. AO as no such verification has been made in the written submission filed for filing the same before the authorities. However, only a few sample bills have been filed and complete bills have not been filed. Since these documents were not filed before the Ld. CIT(A) nor even before the Ld. AO and go to the root of the matter, the assessee needs to be provided another opportunity to make proper submissions as the order of Ld. CIT(A) as well as the Ld. AO are *ex parte*. Hence, in the interest of justice and fair play, both the orders of the Ld. CIT(A) as well as the Ld. AO are hereby set aside and the issue is remitted to the Ld. AO for the assessment to be made *de novo* by the Ld. AO after granting an opportunity of being heard to the assessee and the assessee shall be at liberty to raise all the contentions in regard to the claim and in support of the income being from the claimed source before the Ld. AO along with the legal issues involved.

9. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 4th April, 2025.

Sd/-

[Duvvuru RL Reddy]

Vice President (KZ)

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 04.04.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Shri Palash Kumar Kapas, Ground Floor, Kathuria Para, Uttar Baksara, Pal Para, Howrah, West Bengal, 711110.**
2. **ACIT, Circle-47, Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata